

1-1 By: Gooden, et al. (Senate Sponsor - Estes) H.B. No. 912
 1-2 (In the Senate - Received from the House May 10, 2013;
 1-3 May 10, 2013, read first time and referred to Committee on
 1-4 Agriculture, Rural Affairs, and Homeland Security; May 15, 2013,
 1-5 reported favorably by the following vote: Yeas 3, Nays 1;
 1-6 May 15, 2013, sent to printer.)

1-7 COMMITTEE VOTE

| | Yea | Nay | Absent | PNV |
|------|-----|-----|--------|-----|
| 1-8 | X | | | |
| 1-9 | | X | | |
| 1-10 | | | | |
| 1-11 | X | | | |
| 1-12 | | | X | |
| 1-13 | X | | | |

1-14 A BILL TO BE ENTITLED
 1-15 AN ACT

1-16 relating to images captured by unmanned vehicles and unmanned
 1-17 aircraft; providing penalties.

1-18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-19 SECTION 1. This Act shall be known as the Texas Privacy Act.

1-20 SECTION 2. Subtitle B, Title 4, Government Code, is amended
 1-21 by adding Chapter 423 to read as follows:

1-22 CHAPTER 423. USE OF UNMANNED VEHICLES AND UNMANNED AIRCRAFT

1-23 Sec. 423.001. DEFINITION. In this chapter, "image" means
 1-24 any capturing of sound waves, thermal, infrared, ultraviolet,
 1-25 visible light, or other electromagnetic waves, odor, or other
 1-26 conditions existing on or about real property in this state or an
 1-27 individual located on that property.

1-28 Sec. 423.002. NONAPPLICABILITY. This chapter does not
 1-29 apply to an image of real property or an individual on real property
 1-30 located in this state that is captured by an unmanned vehicle or
 1-31 unmanned aircraft operated in this state:

1-32 (1) for purposes of professional or scholarly research
 1-33 and development by a person acting on behalf of an institution of
 1-34 higher education, as defined by Section 61.003, Education Code,
 1-35 including a person who:

1-36 (A) is a professor, employee, or student of the
 1-37 institution; or

1-38 (B) is under contract with or otherwise acting
 1-39 under the direction or on behalf of the institution;

1-40 (2) in airspace designated as a test site or range
 1-41 authorized by the Federal Aviation Administration for the purpose
 1-42 of integrating unmanned aircraft systems into the national
 1-43 airspace;

1-44 (3) as part of an operation, exercise, or mission of
 1-45 any branch of the United States military;

1-46 (4) if the image is taken by a satellite for the
 1-47 purpose of mapping;

1-48 (5) by a manufacturer or distributor of the unmanned
 1-49 vehicle or unmanned aircraft in connection with the development,
 1-50 manufacture, testing, or research of the vehicle or the aircraft;

1-51 (6) by a manufacturer or distributor incidental to the
 1-52 activities authorized under Subdivision (5) and the manufacturer or
 1-53 distributor discloses the image voluntarily to law enforcement
 1-54 because the manufacturer or distributor reasonably believes the
 1-55 image shows the commission of an offense; or

1-56 (7) by or for an electric or natural gas utility:

1-57 (A) for operations and maintenance of utility
 1-58 facilities for the purpose of maintaining utility system
 1-59 reliability and integrity;

1-60 (B) for inspecting utility facilities to
 1-61 determine repair, maintenance, or replacement needs during and

2-1 after construction of such facilities;
 2-2 (C) for assessing vegetation growth for the
 2-3 purpose of maintaining clearances on utility easements; and
 2-4 (D) for utility facility routing and siting for
 2-5 the purpose of providing utility service.
 2-6 Sec. 423.003. OFFENSE: ILLEGAL USE OF UNMANNED VEHICLE OR
 2-7 UNMANNED AIRCRAFT TO CAPTURE IMAGE. (a) A person commits an
 2-8 offense if the person uses an unmanned vehicle or unmanned aircraft
 2-9 to capture an image of:
 2-10 (1) an individual or privately owned real property in
 2-11 this state with the intent to conduct surveillance on the
 2-12 individual or property captured in the image; or
 2-13 (2) real property in this state, on which a primary or
 2-14 secondary school or a licensed child-care facility is operated or
 2-15 an individual located on that property, with the intent to conduct
 2-16 surveillance.
 2-17 (b) An offense under this section is a Class C misdemeanor.
 2-18 (c) It is an exception to the application of this section
 2-19 that the image was captured:
 2-20 (1) with the consent of the individual captured in the
 2-21 image and the individual who owns or lawfully occupies the real
 2-22 property captured in the image;
 2-23 (2) pursuant to a valid search or arrest warrant;
 2-24 (3) by a law enforcement authority or a person who is
 2-25 under contract with or otherwise acting under the direction or on
 2-26 behalf of a law enforcement authority:
 2-27 (A) in immediate pursuit of a person law
 2-28 enforcement officers have probable cause to suspect has committed a
 2-29 felony;
 2-30 (B) for the purpose of documenting a crime scene
 2-31 where a felony has been committed;
 2-32 (C) for the purpose of investigating the scene of
 2-33 a human fatality or suspected human fatality;
 2-34 (D) in connection with the search for a missing
 2-35 person; or
 2-36 (E) for the purpose of resolving a hostage
 2-37 situation;
 2-38 (4) by state or local law enforcement authorities, or
 2-39 a person who is under contract with or otherwise acting under the
 2-40 direction or on behalf of state authorities, for the purpose of:
 2-41 (A) surveying the scene of a catastrophe or other
 2-42 damage to determine whether a state of emergency should be
 2-43 declared;
 2-44 (B) preserving public safety, protecting
 2-45 property, or surveying damage or contamination during a lawfully
 2-46 declared state of emergency; or
 2-47 (C) conducting routine air quality sampling and
 2-48 monitoring;
 2-49 (5) at the scene of a spill, or a suspected spill, of
 2-50 hazardous materials;
 2-51 (6) for the purpose of fire suppression;
 2-52 (7) for the purpose of rescuing a person whose life or
 2-53 well-being is in imminent danger;
 2-54 (8) by a Texas licensed real estate broker in
 2-55 connection with the marketing, sale, or financing of real property,
 2-56 provided that no individual is identifiable in the image;
 2-57 (9) of real property or a person on real property that
 2-58 is within 25 miles of the United States border;
 2-59 (10) from a height no more than eight feet above ground
 2-60 level in a public place, if the image was captured without using any
 2-61 electronic, mechanical, or other means to amplify the image beyond
 2-62 normal human perception;
 2-63 (11) of public real property or a person on that
 2-64 property;
 2-65 (12) by an electric or telecommunication utility
 2-66 provider regulated by the Public Utility Commission of Texas:
 2-67 (A) for the purpose of performing and reporting
 2-68 the results of the annual inspection of transmission lines and
 2-69 other facilities as required by the commission, if the images are

3-1 captured without the intent to conduct surveillance on an
3-2 individual or real property located in this state; or
3-3 (B) for the purpose of maintaining or repairing
3-4 transmission lines or other facilities, if the images are captured
3-5 without the intent to conduct surveillance on an individual or real
3-6 property located in this state;
3-7 (13) by the owner or operator of an oil, gas, water, or
3-8 other pipeline for the purpose of maintaining or repairing
3-9 pipelines or other transmission facilities, if the images are
3-10 captured without the intent to conduct surveillance on an
3-11 individual or real property located in this state;
3-12 (14) by a satellite for the purpose of mapping,
3-13 provided that the images are not captured with the intent to conduct
3-14 surveillance of an individual or real property located in this
3-15 state;
3-16 (15) in connection with oil pipeline safety and rig
3-17 protection;
3-18 (16) in connection with port authority surveillance
3-19 and security;
3-20 (17) in connection with cattle ranching or agriculture
3-21 and wildlife management;
3-22 (18) in connection with oil and gas exploration;
3-23 (19) for the purpose of water supply safety;
3-24 (20) for the purpose of surveying land;
3-25 (21) for the purpose of agriculture and farming
3-26 safety; or
3-27 (22) in connection with an air show or related event.
3-28 (d) It is a defense to prosecution under this section that
3-29 the person destroyed the image:
3-30 (1) as soon as the person had knowledge that the image
3-31 was captured in violation of this section; and
3-32 (2) without disclosing, displaying, or distributing
3-33 the image to a third party.
3-34 (e) This chapter does not apply to the manufacture,
3-35 assembly, distribution, or sale of an unmanned vehicle or unmanned
3-36 aircraft.
3-37 (f) In this section, "intent" has the meaning assigned by
3-38 Section 6.03, Penal Code.
3-39 Sec. 423.004. OFFENSE: POSSESSION, DISCLOSURE, DISPLAY,
3-40 DISTRIBUTION, OR USE OF IMAGE. (a) A person commits an offense if
3-41 the person:
3-42 (1) captures an image in violation of Section 423.003;
3-43 and
3-44 (2) possesses, discloses, displays, distributes, or
3-45 otherwise uses that image.
3-46 (b) An offense under this section for the possession of an
3-47 image is a Class C misdemeanor. An offense under this section for
3-48 the disclosure, display, distribution, or other use of an image is a
3-49 Class B misdemeanor.
3-50 (c) Each image a person possesses, discloses, displays,
3-51 distributes, or otherwise uses in violation of this section is a
3-52 separate offense.
3-53 (d) It is a defense to prosecution under this section for
3-54 the possession of an image that the person destroyed the image as
3-55 soon as the person had knowledge that the image was captured in
3-56 violation of Section 423.003.
3-57 (e) It is a defense to prosecution under this section for
3-58 the disclosure, display, distribution, or other use of an image
3-59 that the person stopped disclosing, displaying, distributing, or
3-60 otherwise using the image as soon as the person had knowledge that
3-61 the image was captured in violation of Section 423.003.
3-62 Sec. 423.005. ILLEGALLY OR INCIDENTALLY CAPTURED IMAGES NOT
3-63 SUBJECT TO DISCLOSURE. (a) Except as otherwise provided by
3-64 Subsection (b), an image captured in violation of Section 423.003,
3-65 or an image captured by an unmanned vehicle or unmanned aircraft
3-66 that was incidental to the lawful capturing of an image:
3-67 (1) may not be used as evidence in any criminal or
3-68 juvenile proceeding, civil action, or administrative proceeding;
3-69 (2) is not subject to disclosure, inspection, or

4-1 copying under Chapter 552; and
4-2 (3) is not subject to discovery, subpoena, or other
4-3 means of legal compulsion for its release.

4-4 (b) An image described by Subsection (a) may be disclosed
4-5 and used as evidence to prove a violation of this chapter and is
4-6 subject to discovery, subpoena, or other means of legal compulsion
4-7 for that purpose.

4-8 Sec. 423.006. CIVIL ACTION. (a) An owner or tenant of
4-9 privately owned real property located in this state may bring
4-10 against a person who, in violation of Section 423.003, captured an
4-11 image of the property or the owner or tenant while on the property
4-12 an action to:

4-13 (1) enjoin a violation or imminent violation of
4-14 Section 423.003 or 423.004;

4-15 (2) recover a civil penalty of:

4-16 (A) \$5,000 for all images captured in a single
4-17 episode in violation of Section 423.003; or

4-18 (B) \$10,000 for disclosure, display,
4-19 distribution, or other use of any images captured in a single
4-20 episode in violation of Section 423.004; or

4-21 (3) recover actual damages if the person who captured
4-22 the image in violation of Section 423.003 discloses, displays, or
4-23 distributes the image with malice.

4-24 (b) For purposes of recovering the civil penalty or actual
4-25 damages under Subsection (a), all owners of a parcel of real
4-26 property are considered to be a single owner and all tenants of a
4-27 parcel of real property are considered to be a single tenant.

4-28 (c) In this section, "malice" has the meaning assigned by
4-29 Section 41.001, Civil Practice and Remedies Code.

4-30 (d) In addition to any civil penalties authorized under this
4-31 section, the court shall award court costs and reasonable
4-32 attorney's fees to the prevailing party.

4-33 (e) Venue for an action under this section is governed by
4-34 Chapter 15, Civil Practice and Remedies Code.

4-35 (f) An action brought under this section must be commenced
4-36 within two years from the date the image was:

4-37 (1) captured in violation of Section 423.003; or

4-38 (2) initially disclosed, displayed, distributed, or
4-39 otherwise used in violation of Section 423.004.

4-40 Sec. 423.007. RULES FOR USE BY LAW ENFORCEMENT. The
4-41 Department of Public Safety shall adopt rules and guidelines for
4-42 use of an unmanned vehicle or unmanned aircraft by a law enforcement
4-43 authority in this state.

4-44 SECTION 3. The change in law made by this Act applies only
4-45 to the capture, possession, disclosure, display, distribution, or
4-46 other use of an image that occurs on or after the effective date of
4-47 this Act.

4-48 SECTION 4. The provisions of this Act or the applications of
4-49 those provisions are severable as provided by Section 311.032(c),
4-50 Government Code.

4-51 SECTION 5. This Act takes effect September 1, 2013.

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